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Chair, Committee on the Impact
of Domestic Violence and the Courts

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No. R-15-0016
)	
Petition to Repeal Rule 6(E)(4)(e)(2),)	Comment to Petition to Repeal
Arizona Rules of Protective Order Procedure)	Rule 6(E)(4)(e)(2) of the Arizona
)	Rules of Protective Order Procedure
_____)	

The Committee on the Impact of Domestic Violence and the Courts (CIDVC)

has authorized the Honorable Wendy A. Million, CIDVC chair, to file this comment to Petition No. R-15-0016 on the committee's behalf.

DISCUSSION

Rule 6(E)(4)(e)(2), Rules of Protective Order Procedure, has withstood two prior attacks (R-09-0045 and R-12-0007) on Second Amendment grounds. The most recent iteration of this rule was adopted by the Supreme Court in 2012 and reads:

Rule 6(E)(4) --

e. Other Relief:

1. The judicial officer may grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances. A.R.S. § 12-1809(F)(3).

2. The judicial officer shall ask the plaintiff about the defendant's use of or access to weapons or firearms. If necessary to protect the plaintiff or other specifically designated person, the judicial officer may prohibit the defendant from possessing, purchasing or receiving firearms and ammunition for the duration of the Injunction Against Harassment.

A.R.S. § 12-1809(F)(3) authorizes a judicial officer to “[g]rant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.” Under this statutory authority, a judicial officer has the discretion to prohibit a defendant from possessing firearms for the protection of the plaintiff and other protected persons.

Petition R-15-0016 now brings a challenge on Fourth Amendment grounds, relying on the Supreme Court’s decision in State of Arizona v. Serna, 235 Ariz. 270 (2014).

The Supreme Court has set clearly defined limitations on the application of the holding in Serna. “Our holding governs only those circumstances in which the police wish to search a person with whom they are engaged in a consensual encounter.” Serna at 276.

With the narrow parameters established by the Supreme Court, Serna is inapplicable to Injunctions Against Harassment. The issuance of a civil Injunction Against Harassment by an Arizona judicial officer does not involve a search and seizure of weapons by a judicial officer. Moreover, no part of the Injunction Against Harassment operates as a warrant for the search for or seizure of weapons by law enforcement.

A.R.S. § 12-1809(F)(3) allows a judicial officer to grant relief necessary for the protection of the plaintiff or other protected persons. A judicial officer, in weighing the plaintiff’s safety, can make reasonable and necessary provisions to safeguard the plaintiff. If a judicial officer orders the defendant to possess no firearms for the duration of the Injunction

Against Harassment, the judicial officer also will enter orders for the defendant to surrender the firearms to a law enforcement agency within a specified period of time. Defendant also has a right to contest the issuance of the Injunction Against Harassment. If a contested hearing request is conducted, the defendant may also raise the issue of the firearms prohibition at that time.

CONCLUSION

For the reasons stated above, CIDVC respectfully asks the Court to deny Petition R-15-0016.

Respectfully submitted this ____ day of May, 2015.

/s/_____
Honorable Wendy A. Million
Magistrate, Tucson City Court

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